Chestnut Hill Bus Corp. *and* Charles H. Jones

Amalgamated Transit Union, Local 1336, AFL–CIO *and* Charles H. Jones. Cases 39–CA–1644 and 39–CB–430

30 April 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 30 November 1983 Administrative Law Judge Hutton S. Brandon issued the attached decision. The Respondent Employer and the Respondent Union each filed exceptions and supporting briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set out in full below and orders that

A. The Respondent Employer, Chestnut Hill Bus Corp., Bridgeport, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees in regard to their hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization, except as may be authorized under the proviso of Section 8(a)(3) of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Charles H. Jones immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and, jointly and severally with the Union, make Jones whole for any loss of earnings and other benefits resulting from his unlawful discharge in the manner set forth in the section of the administrative law judge's decision entitled "The Remedy."

(b) Remove from its files any reference to the unlawful discharge of Charles H. Jones and notify him in writing that this has been done and that the discharge will not be used against him in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facilities in Bridgeport, Connecticut, copies of the attached notice marked "Appendix A."[3] Copies of the notice, on forms provided by the Officer in Charge for Subregion 39, after being signed by the Respondent Employer's authorized representative, shall be posted by the Respondent Employer immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent Employer to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Officer in Charge for Subregion 39 in writing within 20 days from the date of this

[1] The judge examined only arts. 5.1 and 5.2 of the Respondents' collective-bargaining agreement and found that the union-security provisions contained in those sections created an "obvious ambiguity" as to whether current employees who were not members of the Union when the contract was executed were covered by those provisions. The judge failed to discuss or include in his decision the text of art. 5.4 of the collective-bargaining agreement. That provision reads as follows:

> 5.4 Any employee who fails to become or remain a member of the Union by reason of his failure to tender to the Union the initiation fees (if not already a member) or periodic dues uniformly required as a condition of acquiring or retaining membership in the Union in accordance with the Labor-Management Relations Act of 1947, as amended, shall be discharged by the Company; provided, however, that the Company shall not be obligated to discharge an employee unless: (1) the Company has received from the Union (a) written notice of the employee's failure to tender such initiation fees or periodic dues, and (b) a written demand for such discharge; and (2) such discharge can be made lawfully in accordance with the Labor-Management Relations Act of 1947, as amended.

We find it unnecessary, however, to pass on whether art. 5.4 cures the ambiguity perceived by the judge in the contract's union-security clause in view of our agreement with the judge's additional findings that the Respondent Union violated Sec. 8(b)(1)(A) and (2) of the Act and the Respondent Employer violated Sec. 8(a)(3) and (1) of the Act because Jones' discharge was predicated in part on Jones' failure to pay union dues for a period during which no union-security agreement was in effect.

[2] We shall modify the judge's recommended Order to require that both the Respondent Employer and the Respondent Union comply with an expunction remedy. See *Sterling Sugars*, 261 NLRB 472 (1982); *R. H. Macy & Co.*, 266 NLRB 858 (1983).

[3] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Order what steps the Respondent Employer has taken to comply.

B. The Respondent Union, Amalgamated Transit Union, Local 1336, AFL–CIO, Bridgeport, Connecticut, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Causing or attempting to cause Chestnut Hill Bus Corp. to discriminate against Charles H. Jones, or any other employee, in violation of Section 8(a)(3) of the Act.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, except to the extent that such rights may be affected by a lawful agreement requiring membership in a labor organization as a condition of employment.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify Chestnut Hill Bus Corp. in writing, with a copy to Charles H. Jones, that it does not object to the reinstatement by Chestnut Hill Bus Corp. of Charles H. Jones.

(b) Jointly and severally with Chestnut Hill Bus Corp. make Charles H. Jones whole for any loss of earnings and other benefits resulting from his unlawful discharge in the manner set forth in the section of the administrative law judge's decision entitled "The Remedy."

(c) Remove from its files, and ask Chestnut Hill Bus Corp. to remove from its files, any reference to the unlawful discharge of Charles H. Jones and notify him in writing that it has done so and that it will not use the discharge against him in any way.

(d) Post at its office and meeting hall, if any, copies of the attached notice marked "Appendix B."[4] Copies of the notice, on forms provided by the Officer in Charge for Subregion 39, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Additional copies of Appendix B shall be signed by the Respondent Union's authorized representative and forthwith returned to the Officer in Charge for Subregion 39. These notices shall be furnished to Chestnut Hill Bus Corp. and posted in places where notices to employees are customarily posted.

(f) Notify the Officer in Charge for Subregion 39 in writing within 20 days from the date of this Order what steps the Respondent Union has taken to comply.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of you in regard to your hire or tenure of employment or any other term or condition of employment for supporting Amalgamated Transit Union, Local 1336, AFL–CIO, or any other union, or for refraining from all organizational activity, including membership in Amalgamated Transit Union, Local 1336, AFL–CIO, except as may be required under the proviso of Section 8(a)(3) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Charles H. Jones immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and WE WILL, jointly and severally with the above-named Union, make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL remove from our files any reference to the unlawful discharge of Charles H. Jones and WE WILL notify him in writing that we have done so and that the discharge will not be used against him in any way.

CHESTNUT HILL BUS CORP.

[4] See fn. 3 above.

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT cause or attempt to cause Chestnut Hill Bus Corp. to discriminate against Charles H. Jones, or any other employee, in violation of Section 8(a)(3) of the Act.

WE WILL NOT in any like or related manner restrain or coerce employees of Chestnut Hill Bus Corp. in the exercise of the rights guaranteed them by Section 7 of the Act, except to the extent that such rights may be affected by a lawful agreement requiring membership in a labor organization as a condition of employment.

WE WILL notify Chestnut Hill Bus Corp. in writing, with a copy to Charles H. Jones, that we have no objection to the employment of Charles H. Jones, and WE WILL NOT oppose his reinstatement without loss of benefits or seniority.

WE WILL, jointly and severally with Chestnut Hill Bus Corp., make Charles H. Jones whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL remove from our files, and ask Chestnut Hill Bus Corp. to remove from its files, any reference to the unlawful discharge of Charles H. Jones and WE WILL notify him in writing that we have done so and that we will not use the discharge against him in any way.

AMALGAMATED TRANSIT UNION,
LOCAL 1336, AFL–CIO

DECISION

STATEMENT OF THE CASE

HUTTON S. BRANDON, Administrative Law Judge. These consolidated cases were tried at Fairfield, Connecticut, on October 12, 1983.[1] The charges in both cases were filed by Charles H. Jones, an individual (Jones), on May 5, and an order consolidating cases and a consolidated complaint and notice of hearing was issued on June 29. The primary issues presented are (a) whether Amalagamated Transit Union, Local 1336, AFL–CIO, hereinafter called the Respondent Union or the Union, violated Section 8(b)(2) of the National Labor Relations Act (the Act), by causing Chestnut Hill Bus Corp. (the Respondent Employer or the Company), to discharge its employee Jones for his failure to pay union dues and initiation fees when he was under no obligation to do so, and (b) whether the Respondent Employer violated Section 8(a)(1) and (3) of the Act, by granting the Union's request and discharging Jones on April 15.

On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel, the Respondent Employer and the Respondent Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent Employer is a Connecticut corporation with an office and place of business in Bridgeport, Connecticut, where it is engaged in the providing of school bus transportation services. During the 12-month period ending April 30 the Company in the course and conduct of its business operations derived gross revenues in excess of $250,000 and during the same period purchased and received at its Bridgeport, Connecticut facility products, goods, and materials valued in excess of $50,000, directly from points outside the State of Connecticut. The complaint alleges and both the Company and the Union admit that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint also alleges, and both the Company and Union admit, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. MATERIAL FACTS

Jones was employed by the Company in 1980 and worked on a part-time basis as a bus driver. While the empoyees of the Company were represented by the Union, Jones never joined the Union.

The Union and Company were parties to successive collective-bargaining agreements, the first one having been executed in September 1976. The last collective-bargaining agreement were not concluded until mid-December 1982, and the new agreement was not executed until December 27, 1982. However the new agreement was made retroactive to the day following the expiration of the preceding agreement to ensure a continuity of the existenoe of the collective-bargaining agreement between the parties.

The new collective-bargaining agreement contained in article 5 the following provision on union security which was identical to a provision negotiated in the first collec-

[1] All dates are in 1983 unless otherwise indicated.

tive-bargaining agreement between the parties and which was continued unchanged in all succeeding agreements:

> 5.1 All employees covered by this agreement shall become and remain members of the Union as a condition precedent to continuing employment during the terms of this Agreement, in accordance with paragraph 5.2
>
> 5.2 Any employee who is a member of the Union in good standing on the effective date of this agreement shall, as a condition of employment, after the thirtieth day following said effective date, maintain his membership in the Union to the extent of paying membership dues uniformly levied against all union members. Any employees thereafter hired shall, as a condition of employment start on the 31st day following the beginning of employment, acquire and maintain membership in the Union to the extent of paying the initiation fee and the periodic membership dues uniformly required of all union members. The date of hire is the date the employee's name is placed on the Company roster.

Following execution of the current collective-bargaining agreement the Union through its president Robert Newman drafted a notice to employees of the Company dated January 10 which Newman had posted in the drivers' room at the Company's facility. In the notice Newman advised employees of the execution of the agreement, set forth their union dues obligations, and related the method by which back dues could be paid for the preceding 4 months during which no collective-bargaining agreement had been in effect.[2] The notice also related that nonmembers employees would be required to join and pay initiation fees as well as dues including dues for the preceding 4 months.

On or about January 13 Union President Newman and Robert Raiente, the Union's financial secretary, went to the company facility to enlist union members.[3] It is undisputed that during this visit to the facility Newman talked to Jones about becoming a union member. There is, however, some dispute regarding exactly what was said. Jones testified that when he came into the drivers room on January 13 he talked to Newman about joining the Union. Jones inquired of Newman what benefits he had from the Union. Newman began to list the benefits, but Jones found the listing inadequate and asked Newman why he should join the Union if he got no benefits. While apparently there were other comments, Jones testified that at no time did Newman tell Jones how much money Jones owed the Union or how much union dues were. In leaving Jones told Newman that he was not joining the Union and if Newman was going to fire him to go ahead and fire him because Jones was not going to join. Newman in his testimony, on the other hand, contradicted Jones claiming that he specifically told Jones that the Union dues were $10 a month and the Union's initiation fee was $10. Newman related how dues back to September could be paid. He described Jones as belligerent during the exchange. Raiente generally corroborated Newman.

Jones made no subsequent effort to join the Union. On February 18 another notice was posted by the Union at the Company advising employees that if they were not members of the Union that they had until March 4 to register and join the Union. The notice stated that failure to join the Union and tender initiation fees and periodic dues would result in a written demand to the Company to discharge the employees. Jones testified he did not see this notice.

By letter dated March 29 Newman sent the Company a list of names of 12 employees including Jones whom the letter said had failed "to tender membership, initiation fees, or periodic dues as outlined in our contract, page 4, article 5.4." The letter demanded the discharge of the listed employees. It is undisputed that Newman's letter was also posted at the Company including a handwritten notation at the bottom of the letter stating, "Give them until 4/15/83 to sign or terminate them per Bob Newman, Union President." Jones admittedly saw this letter after it was posted and even removed it to make a copy of it. Nevertheless, he made no efforts prior to April 15 to attain union membership or pay back dues. On April 15 he received a termination slip from a company secretary listing the reason for his termination as "does not want to join the union."[4]

III. ARGUMENTS AND CONCLUSIONS

The General Counsel relies on a number of arguments to establish the violation attributed to the Company and the Union. First, he argues that the union-security clause herein is in actuality only a maintenance of membership clause which can serve no lawful predicate for Jones' discharge since he had never joined the Union. According to the General Counsel, the alleged union-security provision is totally silent on the obligation of an employee who is not a union member on the date the latest contract was effectuated to join the union. Moreover, even if Jones had been required under the collective-bargaining agreement to join the Union when he was initially hired in 1980 his obligation to remain a member ceased when the contract expired on June 30, 1982, and he was not required to join the Union when the new contract came into effect under the language of the contract.

As a second argument the General Counsel contends that the discharge was unlawful because the Union sought and accomplished the discharge because of Jones' failure to pay union dues during the hiatus between the expired contract and the new contract, a period when

[2] It was the practice of the Company to lay off its drivers during the summer months. After the drivers were recalled in September they apparently worked without a bargaining agreement until an agreement was reached on the new contract.

[3] Newman made no claim on the part of himself or on the part of the Union that there had been any prior effort to enforce the Union's security provisions of either the newly negotiated collective-bargaining agreement or the prior agreements. It was explained that there was a constant turnover among employees so that it was difficult for the Union to keep up with who was in the collective-bargaining unit. Raiente conceded in his testimony that as of January 14 there were about 58 collective-bargaining unit employees who were not members of the Union.

[4] Jones related in his testimony that he provided the secretary the language inserted on the separation slip.

there was no union-security provision in existence. The General Counsel citing *Typographical Union (Plain Dealer Publishing Co.)*, 225 NLRB 1281 (1976), asserts that dues obligations under a union-security agreement start on the day of the execution of the agreement and not the date to which the agreements is made retroactive.

The General Counsel proceeds to argue alternatively, and although not specifically alleged in the complaints, that even assuming a valid union-security clause existed the Union failed to fulfill its fiduciary obligation to Jones thus making his discharge unlawful under Section 8(b)(1)(A) of the Act, because the Union never specifically provided Jones with accurate information concerning the amount of the dues and fees he owed, the method of computations, or the date payment was required. Such information to the affected employee is necessary, the General Counsel urges citing *Philadelphia Sheraton Corp.*, 136 NLRB 888 (1962); *Machinists Lodge 946 (Aerojet-General Corp.)*, 186 NLRB 561 (1970), before a union-security provision may be legitimately invoked. According to the General Counsel, Jones was entitled to actual notice of the dues and fees information as well as the Union's intent to seek his discharge and the effective date of the discharge. In this connection the General Counsel argues that the Union's notices posted at the Company's facilities requesting the discharge of Jones and the discharge date was insufficient notice to Jones under Board law.

The Company in its brief relies solely on the union-security provision in the collective-bargaining agreement. Under its construction of the agreement the union-security provision is not ambiguous. Moreover the Company relies on the testimony of Ralph Arganese, the Company's president, and William Kyer, the former union president, who testified regarding the intent and application of the union-security provision. Both testified that the parties intended the agreement to be a union-security agreement and that it had been applied in that manner. However, Arganese admitted that prior to the Union's request involved in the discharge of Jones, there had been no other attempt by the Union to enforce the union-security provision through discharges of employees. With respect to the sufficiency of the notice given Jones regarding his dues and fees obligation as well as the Union's request to discharge him the Company argues that Jones had actual notice of such information through the remarks to him by Union President Newman and through the notices posted at the Company's facilities. Jones, according to the Company, deliberately ignored the warnings and decided that he would rather accept the discharge than join the Union. The Union arguments contained in its brief are the same as those advanced by the Company.

Concidering first the issue of the existence of a valid union-security provision, it is quite clear that the parties intended to have, and believed that they had, a valid union-security provision. They entitled the pertinent provision "Union Security." And, aside from the testimony of Arganese and Kyer to that effect, section 5.1 of article V clearly reflects the intent of the parties that "all employees" covered by the agreement were to become members of the Union as a condition of employment. Section 5.2 does not attempt, in my view, to modify or limit the all exclusive intent of section 5.1, but it nevertheless fails to specifically apply the intent of section 5.1 to employees who were not members on the effective date of the execution of the agreement. Thus, it is unclear what terms or within what period such employees could be required to join the Union. This omission creates an obvious ambiguity. The Board has held, as the General Counsel points out, that union-security provisions relied on as justification for discharge must be expressed in clear and unmistakable language. In *Jack Watkins, G.M.C.*, 203 NLRB 632, 635 (1973), the Board stated: "In view of the extreme consequences that can legally be imposed on a nonconforming employee, it is not asking too much to require the parties to a labor agreement to express the essentials of union-security provisions in unmistakable language." Moreover, it is a familiar principle that ambiguities in construing contractual provisions are to be construed most strongly against the parties drafting such provisions. See *Taft Broadcasting Co. v. NLRB*, 441 F.2d 1382, 1384 (8th Cir. 1971); Williston, *Contract* 621 (3d ed. 1961).

As the Company and Union argue, past practices may be used to demonstrate the intent of an ambiguous contract provision. *Standard Homes*, 249 NLRB 1085 (1977). However, the record is clear that the Union had never previously attempted to enforce the union-security provision under the old collective-bargaining agreement. Thus, past practice demonstrates nothing that would serve to define the critical omission in the clause as argued by the General Counsel.

The Company and Union correctly argue that even an oral union-security agreement is lawful and enforceable citing *Pacific Iron & Metal Co.*, 175 NLRB 604 (1969). By this argument they imply that whatever deficiency exists in the written agreement it was cured by the understanding of the parties and their past practice. Oral agreements must be subject to proof of their precise terms and affected employees must be fully and mistakably informed of such terms before such agreements may become effective. There was no evidence here of a specific oral agreement between the parties curing the omission in the written agreement. Moreover, since the parties never recognized an omission in the union-security arrangement they could hardly have fully informed employees regarding an oral agreement on an interpretation curing the ommission.

Finally, Respondents argue that in the instant case Jones did not rely any particular interpretation of the union-security provision in deciding not to join the Union and that the argument against the provision arose in the General Counsel sui generis. The fact remains that the validity of the provision as applied to Jones was put in issue by his discharge pursuant to the provision. Jones' filing of a charge in this matter obligated the General Counsel to access the legality of the discharge under the Act considering all the circumstances, including the union-security provision relied on by Respondents as applied to Jones.

Accordingly, and considering all the foregoing, I conclude that the provision on union security in the applica-

ble collective-bargaining agreement between the parties, silent as it was with respect to its application to employees who were not union members on the date of its execution, did not constitute a valid union-security provision as applied to such employees.

Jones was hired in 1980 during the existence of the then effective collective-bargaining agreement containing provisions making union membership a condition of employment for new hires. As his continued employment during the term of that agreement which expired on June 30, 1982, was contrary to the union-security provision as it applied to new hires Jones was subject to discharge. The Union did not, however, seek his discharge at that time, and even in the instant case did not predicate its attempt to discharge him on his lack of membership during the existence of the prior agreement. As the General Counsel points out a union-security clause does not survive the expiration of a contract absent a contractual provision continuing it. *Trico Products Corp.*, 238 NLRB 1306 (1978). Thus, when the new collective-bargaining agreement was executed on December 27 Jones enjoyed the status of a current employee, not a new hire and, not having become a member of the Union, he was not required under the provisions of the agreement to maintain his membership in the Union. Under these circumstances, having construed the union-security provision as being inapplicable to current employees on the effective date of the execution of the agreement, I conclude, as argued by the General Counsel, that Jones had no obligation under the latest contract executed by the parties to join the Union and the Union's request for his discharge therefore violated Section 8(b)(2) and (1)(A)[5] of the Act and the Employer's acceding to that demand violated Section 8(a)(3) and (1) of the Act.

I also find merit to the General Counsel's argument that Jones' discharge was additionally violative of Section 8(b)(2) of the Act, even assuming the existence of a valid union-security agreement applicable to Jones, because Jones' discharge was predicated in part on Jones' failure to pay dues during a time when no collective-bargaining agreement was in effect. Union dues accrual may not be made retroactive and can begin only from the date of the execution of the current collective-bargaining agreement on December 27, 1982. See *Typographical Union 53*, supra. The Union's notice to employees of January 10 which the parties concede was posted at the Company's premises reflected that nonunion employees were required to join the Union, and pay an initiation fee and double dues catching up for the months of September, October, November, and December. This covers the retroactive period of the contract. There is no evidence herein that the Union retracted that notice at any time subsequent to its posting. Moreover, Newman admitted that he advised Jones of the double dues requirement. Because the Company was also aware, by virtue of the January 10 notice, that the Union was requiring dues deductions to cover the period when there was no union-security agreement in effect, the Company had reasonable grounds for believing that the Union's request for discharge was predicated on his failure to join the Union and pay union dues for a period when he could not legally be required to do so. Reasonable grounds for believing the Union's request was unlawful provides the basis for the finding of an 8(a)(3) and (1) violation by the Company in this case. See *Forsyth Hardwood Co.*, 243 NLRB 1039, 1040 (1979). Accordingly, by acceding to the Union's demand under these circumstances also, the Employer violated Section 8(a)(1) and (3) of the Act as alleged.

I find no merit, however, to the General Counsel's alternative contention that assuming the validity of the union-security agreement, the Union nevertheless breached its fiduciary obligation in violation of Section 8(b)(1)(A) and (2) of the Act[6] by failing, before taking action against Jones, to specifically advise him of his failure to satisfy his obligations under the collective-bargaining agreement, failing to specify to him the amounts owed and method of computations, and failing to specify the dates payments were due. This is because I credit the testimony of Newman and Raiente where their testimony contradicts Jones regarding what Jones was told about dues and fees. Newman and Raienter impressed me as honest and straightforward. Jones in his testimony appeared defensive, argumentative, and indirect. Moreover, Jones conceded on cross-examination that he told either Newman or Raiente that paying union dues would be like taking $10 and throwing it out a bus window. The union dues in this case happened, in fact, to be $10 per month. It is beyond belief in the coincidence Jones claims that he would happen to pick $10 in his analogy if he had not already been told that that was the monthly dues.

I also find, contrary to the General Counsel's argument, that Jones had ample actual notice of the Union's request to discharge him for his failure to join. In addition to the information, I find, was provided to him by Newman regarding the union-security arrangement and, although Jones did not see the Union's posting of February 18 (and may not be charged with knowledge of its contents), Jones admittedly saw the Union's notice of March 29, and, in fact, made a copy of it. He thus had actual notice of the Union's request that he be discharged on April 15 if he had not joined the Union and paid his dues and fees by that date. Jones was not likely to misinterpret the notice or its affect for he was not unaware of the requirement of union membership under a legitimate union-security agreement between an employer and a union. Indeed, Jones admitted that at his regular

[5] The complaint is devoid of an 8(b)(1)(A) violation. However, it is clear that the facts which establish the 8(b)(2) violation were litigated and support the 8(b)(1)(A) finding since a discharge occurred. Cf. *Food & Commercial Workers (Gallahue's Supermarkets)*, 247 NLRB 1031, 1033 fn. 7. It is well established that the Board may find and remedy a violation even in the absence of a specific allegation in the complaint so long as the issues are closely connected to the subject matter of the complaint and have been fully litigated. See *Crown Zellerbach Corp.*, 225 NLRB 911, 912 (1976); *Rochester Cadet Cleaners*, 205 NLRB 773 (1973).

[6] The complaint does not specifically set forth this allegation. However, since the General Counsel's argument on this issue is based on the Union's failure to give Jones adequate notice of his membership and dues obligations under the collective-bargaining agreement, and because all elements of the notice to Jones of these matters was fully litigated, I deem the matter ripe for decision. See cases cited at fn. 5, supra.

full-time place of employment he was a dues paying member of another union due to the existence of a legitimate union-security agreement between that union and his full-time employer. It is true, of course, that Board decisions hold that "a union's fiduciary duty to its members entails taking the necessary steps to make certain that a reasonable employee will not fail to meet his union obligations through ignorance or inadvertence, but will do so only as a matter of conscious choice." *Valley Cabinet & Mfg., Inc.*, 253 NLRB 98, 108 (1970). On this record, I find that Jones had actual notice of the Union's claim of a valid union-security agreement applicable to him, that Jones was aware of the amounts claimed by the Union to be due from him, and that Jones was aware several days[7] in advance of the Union's request that he, among others, be discharged for failure to join the Union on April 15 if he had not joined prior to that date. Rather, I find Jones made a conscious decision not to join or pay fees. That conclusion is confirmed by Jones' direction to a company secretary to state on his termination slip as the reason for termination, "does not want to join the Union." Accordingly, I find no breach of the Union's fiduciary duty in this respect, and, thus, no consequential violation of Section 8(a)(b)(1)(A) or (2) of the Act in this regard. The violations of the Union here, as well as those of the Company, stem from the findings already made herein that the union-security arrangement was invalid as applied to Jones under the circumstances of this case and that the discharge of Jones was predicated in part of his failure to pay union dues and fees for a period of time when he could not legitimately be required to join the Union.

CONCLUSIONS OF LAW

1. Respondent Chestnut Hill Bus Corp. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent Amalgamated Transit Union, Local 1336, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent Union did wrongfully and unlawfully cause Respondent Employer to discriminate in regard to the tenure and employment of Charles H. Jones in violation of Section 8(a)(3) of the Act, thereby encouraging membership in Respondent Union, and did thereby violate Section 8(b)(1)(A) and (2) of the Act.

4. By discharging Charles H. Jones at the request of the Union, Respondent Employer has interfered with, restrained, and coerced its employees in violation of their Section 7 rights under the Act and by the same conduct discriminated in regard to the tenure and employment of Jones, all of which encouraged union membership in violation of Section 8(a)(1) and (3) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found both Respondent Employer and Respondent Union to have engaged in certain unfair labor practices, I shall recommend that each be ordered to cease and desist therefrom and to take certain affirmative action in order to effectuate the policies of the Act.

I shall recommend that Respondent Union advise Chestnut Hill Bus Corp., in writing, with a copy to Charles H. Jones, that it has no objection to the reemployment of Jones. It will be further recommended that Respondent Employer offer Jones immediate and full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges. It shall also be recommended that Respondent Union and Respondent Employer, jointly and severally make Jones whole for any loss of pay or other benefits he may have suffered by reason of the unlawful discrimination against him from the date of the discriminatory act of discharge until reinstated. Backpay is to be computed in accordance with the formula approved in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977).[8]

[Recommended Order omitted from publication.]

[7] The record deos not indicate precisely when the Union's March 29 letter was posted by the Company. It is reasonable to infer that it was posted around the date written, particularly in the absence of any contention by Jones that the time afforded him after posting was inadequate to allow him to respond thereto.

[8] See generally *Isis Plumbing Co.*, 138 NLRB 716, 717–721 (1962).